IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 14828 to 14830 of 2005
With
CRIMINAL MISC.APPLICATION No. 14833 of 2005

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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TULSIDAS BANBIHARILAL GOYAL - Applicant(s)
Versus
THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MS ARCHANA R ACHARYA for Applicant(s) : 1,
MR RC KODEKAR APP for Respondent(s) : 1,
MR SP MAJMUDAR for Respondent(s) : 2,

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

Date : 07/04/2006

COMMON ORAL JUDGMENT

1.Rule. Shri R.C.Kodekar, learned APP waives service of notice of rule for the respondent No.1-State of Gujarat and learned counsel Shri S.P.Majmudar waives service of notice of rule for the respondent No.2-complainant in all these four matters.

2.Shri Pankajbhai Popatbhai Savaliya, Company Secretary of M/s.Borsara Machines, one of the divisions of Himson Textile Engineering Industry, Surat-complainant had filed four private criminal complaints i.e. Criminal Case Nos.2473, 2474, 2475 and 2476 of 2003 before the Court of J.M.F.C., Surat against the three accused; (1) M/s.N.K.Filaments Private Limited; (2) Mr.Murlimanohar Banbiharilal Goyal and (3) Tulsidas Banbiharilal Goyal (present applicant) for the offences under Section 138 and 141 of the Negotiable Instrument Act. It is the case of the complainant that the accused No.2-Murlimanohar Banbiharilal Goyal had given in all 17 cheques of Rs.5 lakhs each, but all the cheques were returned by the bank on 29.5.2003 with the endorsement **"account closed"**. All the cheques were duly signed by the accused No.2-Shri Murlimanohar Banbiharilal Goyal. Therefore, the complainant-Company gave statutory

notice dated 9.6.2003 to all the three accused; (1) M/s.N.K.Filaments Private Limited; (2) Mr.Murlimanohar Banbiharilal Goyal and (3) Tulsidas Banbiharilal Goyal (present applicant). But none of them gave any reply to it, therefore, as stated earlier, the complainant filed four complaints i.e. Criminal Case Nos.2473, 2474, 2475 and 2476 of 2003 before the J.M.F.C., Surat against all the three accused for the offences under Sections 138 and 141 of the Negotiable Instrument Act.

3. Criminal Case No.2473 of 2003 was filed by the complainant for dishonouring of four cheques bearing Nos.194862 to 194865 dated 24.5.2003 of Rs.5 lakhs each, in all Rs.20 lakhs. Criminal Case No.2474 of 2003 was filed for dishonouring of four cheques bearing Nos.194858 to 194861 dated 24.5.2003 of Rs.5 lakhs each, in all Rs.20 lakhs. Criminal Case No.2475 of 2003 was filed for dishonouring of five cheques bearing Nos.194870 to 194874 dated 24.5.2003 of Rs.5 lakhs each, in all Rs.25 lakhs and Criminal Case No.2476 of 2003 was filed for dishonouring of four cheques bearing Nos.194866 to 194869 dated 24.5.2003 of Rs.5 lakhs each, in all 20 lakhs. Thus, 4 complaints were filed for cheques of in all Rs.85 lakhs, which were signed by

the accused No.2 Murlimanohar Goyal on behalf of accused No.1 company.

4. Learned J.M.F.C., First Court, Surat, after recording statement of complainant-Shri Pankajbhai Popatbhai Savaliya, Company Secretary of the company, ordered to issue summons to all the three accused for the offences under Sections 138 and 141 of the Negotiable Instrument Act.

5. On receiving the summons, the present applicant-original accused No.3 appeared before the learned Magistrate and submitted discharge application in all the four complaints filed by the complainant on the ground that he had already resigned as Director from the accused No.1-Company since 1999 and that he was not at all concerned with the transactions which took place in 2003 with the accused No.1 and the complainant company.

Ms.Archana Acharya, learned counsel appearing for the applicant-original accused No.3, however, stated that during the pendency and final disposal of those four discharge applications, the Hon'ble Supreme Court, in

case of ***Subramanium Sethuram v. State of Maharashtra reported in JT 2004(8) SC 220*** held that after issuing process the learned Magistrate had no jurisdiction to recall or review his order of issuing process, therefore, the present applicant-original accuse No.3 had withdrawn all those four discharge applications from the court of the learned Magistrate and thereafter filed the present four applications under Section 482 of the Criminal Procedure Code for quashing all the four complaints and the order of process issued by the leaned J.M.F.C., First Court, Surat below it for the offences under Sections 138 and 141 of the Negotiable Instrument Act, qua him.

6. The applicant-original accused No.3 filed all these applications before this court on **15.12.2005 and t**hey were initially placed for admission on **19.12.2005** before **P.B.Majmudar, J** and on that day notice was issued making it returnable on **27.12.2005** and learned APP, Smt.Manisha Lavkumar Shah had waived notice for the opponent-State of Gujarat in all the four applications. Direct service was permitted for opponent No.2-complainant.

7. It appears from the record that the notice was duly served to the opponent No.2-complainant on **24.12.2005** in all the 4 cases, but the complainant had preferred not to remain present on the returnable date i.e. **27.12.2005** before **P.B.Majmudar, J**. Though served, no one was appearing for the complainant, therefore, on **27.12.2005**, **P.B.Majmudar, J** adjourned the matter after Winter Vacation i.e on **17.1.2006** and granted ad interim relief in terms of para 5-B and thereby the proceedings before the Trial Court in all the four cases qua the present applicant-original accused No.3 came to be stayed.

8. Normally, the roster is changed after the vacation, but this time there was no change in the roster and, therefore, even after vacation, **P.B.Majmudar, J** continued to take the same business of quashing. Surprisingly, learned **advocate, Shri S.P.Majmudar (son of P.B.Majmudar, J.**) filed his appearance on behalf of the complainant in all these four matters on **13.1.2006**. Therefore, following order was passed by **Majmudar, J** on **17.1.2006**.

“IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC. APPLICATION No.14828 of 2005
with
CRIMINAL MISC. APPLICATION No.14829 of 2005
with
CRIMINAL MISC. APPLICATION No.14830 of 2005
with
CRIMINAL MISC. APPLICATION No.14833 of 2005

TULSIDAS BANBIHARILAL GOYAL AND OTHERS
Versus
THE STATE OF GUJARAT AND OTHERS

Appearance :
MS ARCHANA R. ACHARYA for the applicants.
PUBLIC PROSECUTOR for Respondent(s) : 1,
MR SP MAJMUDAR for Respondent No.2.

CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 17/01/2006

ORAL ORDER

Not before this Court.

At the request of Ms.Archana R. Acharya, these matters are adjourned to 20th January, 2006. Ad-interim Relief to continue till then.

Office to place these matters before the appropriate Court.

Registry to place a copy of this order in each matter.

Sd/-

[P.B.MAJMUDAR, J.]"

9. In view of the above, all the four matters were placed before Ravi R. Tripathi, J on **20.1.2006**. On that day, learned advocate, Shri S.P.Majmudar for the complainant requested to adjourn all the four matters with a view to enable him to explore the possibility of the

settlement and the matters were kept on **13.2.2006** by extending interim relief till then. Again, on **13.2.2006** on the request of Shri S.P.Majmudar all the matters were adjourned to **28.2.2006** and the ad interim relief was continued till then by Tripathi, J.

On **28.2.2006** all these matters were placed before M.D.Shah, J and they were adjourned to **20.3.2006** and the ad interim relief granted earlier was continued till then.

On **20.3.2006** all these matters were placed before Anant S. Dave, J and the matters were adjourned to **29.3.2006** and ad interim relief granted earlier was continued till then.

10.Roster was changed with effect from 29.3.2006 and once again the business of quashing complaints and proceedings was assigned to **P.B.Majmudar, J**. Therefore, Office made submission on **29/30.3.2006** before the Acting Chief Justice for placing all these matters before the appropriate court **as Shri S.P.Majmudar, son of P.B.Majmudar, J** was appearing in all these matters for the complainant-opponent No.2 company. Thereupon, on administrative side, following

order was passed by the Acting Chief Justice on **30.3.2006** :-

"Place it before Acting Chief Justice on 31.3.2006 at 2.15 p.m.

Sd/-

B.J.SHETHNA

30.3.2006"

11. Accordingly, all these matters were placed on **31.3.2006**. On that day i.e. 31.3.2006, Shri S.P.Majmudar, learned counsel for the opponent No.2-complainant once again prayed for time on the ground of exploring possibility of settlement between the parties. But, Ms.Archana Acharya for the applicant-original accused No.3 had submitted that her client i.e applicant-accused No.3 was not at all concerned and in spite of it he was arraigned as accused in the complaint by the complainant, therefore, they were not ready and willing for any settlement with the complainant. However, Mr.S.P.Majmudar stated that if the matters were adjourned once, then it may be amicably settled. Therefore, at the joint request of the learned counsel for the parties, the matters were adjourned to today, i.e on 7.4.2006 at 21.15 pm.

Accordingly they are placed today.

12.Today, on behalf of the complainant-Company, its Accountant, Shri Abhay Singh Thakore remained present. On his instruction, learned counsel Shri S.P.Majmudar stated that they were ready and willing to settle the matter with the present applicant-accused even for the lesser amount. However, the applicant-accused No.3-Shri Tulsidas Banbiharilal Goyal, personally present before the court through his learned counsel Ms.Acharya stated that he was not at all ready and willing to settle with the complainant as he was falsely involved and harassed by the complainant though he had already resigned from the accused No.1-Company way back in 1999 and that he had no role in the transactions in question, which took place between the parties i.e accused No.1 and the complainant-company in 2003. In spite of it, he was joined as accused No.3 by the complainant only for the purpose of harassing and pressurizing him for knocking out money from him. He had also made other serious grievances in the matter about other tactics adopted by the complainant-Company in the matter.

13.Hearing the applicant-accused and perusing the

complaints and the averments made in the applications, the court was of the prima facie opinion that the complainant had not only misused the process of law by wrongly joining the applicant-accused No.3 in the complaints before the Trial Court, but also tried to dodge the court of P.B.Majmudar, J by engaging Shri S.P.Majmudar, son of Majmudar, J., having hardly 2-3 years of practice, though the stake in the matter was almost 1 crore rupees. It is a clear case of forum shopping, therefore, it was required to be viewed seriously.

However, Shri Abhay Singh Thakore, Accountant of the complainant-Company, took necessary instructions in the matter on the mobile from the complainant-Company and stated through his advocate, Shri S.P.Majmudar that they were really sorry for falsely joining the applicant as accused No.3 in the complaints and the order of process issued by the Trial Court against the present applicant-accused in all the four cases be quashed and all the four complaints qua the present applicant-accused No.3 be also quashed.

14.It appears that for recovering huge amount of Rs.85

lakhs, the complainant found out a short cut of filing criminal complaints before the court of learned J.M.F.C., Surat, and wrongly joined the present applicant as accused No.3 in all the 4 cases though he was neither concerned nor involved in the transactions. Thus, the complainant Company at first instant clearly misused the process of law by joining the applicant as accused No.3 in all the four cases. When the order of process issued by the learned Magistrate was challenged before this court by the applicant-accused No.3 in these applications and the notice was issued by Majmudar, J., then at first instance the complainant preferred not to remain present. But, when the ad interim relief was granted and the proceedings qua the present applicant-accused No.3 stayed by Majmudar, J., then only the complainant had deliberately engaged a raw junior advocate, Shri S.P.Majmudar, son of P.B.Majmudar, J., having standing of hardly 2-3 years, with the sole intention that Majmudar, J make exception to the matters and succeeded in his game when Majmudar, J refused to take up all these four matters. **It would have been much better if the learned Judge had forced his advocate son to withdraw his appearance from all this 4 matters, or the learned Advocate himself offered**

to withdraw his appearance. That had not happened. Be that as it may. But, certainly such an attempt on the part of the complainant, in my opinion, was prima facie case of contempt as it amounts to interference with the smooth, real and clean administration of justice.

15. However, realizing pros and cons of the matter when the complainant has tendered his sincere apology for doing this mischief and assured this court that in future he will not indulge in such type of activities and also stated that the complaints as well as the process issued by the learned Magistrate in all the four cases qua the applicant-accused No.3 be quashed, therefore, I have thought it not fit to initiate any proceedings against the complainant in the matters.

16. Before parting, I must state that **Rule 6** of Chapter *II* of Part VI of the Bar Council of India Rules says that "**An Advocate shall not enter appearance, act, plead or practise in any way before a court, tribunal or Authority mentioned in section 30 of the Act, if the sole of any member thereof is related to the Advocate as father, grandfather, son, grand son, uncle, brother nephew, first cousin, husband, wife, mother, daughter,**

sister, aunt, niece, father-in-law, mother-in-law, son-in law, brother-in-law, daughter-in-law or sister-in-law. For the purpose of this rule, court shall mean a court, Bench a tribunal in which above mentioed relation of the Advocate is as a judge, member or the Presiding Officer”.

It is unfortunate that Shri S.P.Majmudar had filed his appearance on 13.1.2006 in all these matters for the complainant wherein Justice Majmudar had initially issued notice and thereafter granted interim relief and that the matters were to come up before his Lordship. Prima facie, it is clearly a case of professional misconduct. When this was brought to the notice of learned advocate, Shri S.P.Majmudar, then he said that he had just more than 2 years of practice, during which he has made number of appearances in this High Court, but he was not aware about such rule, therefore, being a junior advocate, he may be pardoned. It is true that Shri Majmudar is raw junior advocate having just more than 2 years of practice, but from his own statement it is clear that within a short period of 2 years he has filed hundreds of appearances in this High Court, which is not possible for any other

advocate having even 10 to 15 years of practice. Every one is not fortunate like Mr.Majmudar. When an advocate is having such a thumping practice at the threshold of his career, then it was expected from him to know such rules. Be that as it may. This being the first lapse on the part of the advocate Shri Majmudar, nothing further is required to be done in the matter, more particularly, when he has tendered sincere apology for filing his appearances in all these cases and also assured this court that in future he will be more careful.

At this stage, it would not be wholly irrelevant to state that this was not the first incident.

(1) In Company Petition No.119 of 2004 filed by company “A” praying that respondent company “B” be wound up and the Official Liquidator be appointed. Notice was ordered to be issued by one Judge, but on the returnable date it was placed before another Judge. Therefore, the learned Judge admitted the said petition, but the order of advertisement was deferred and the matter was adjourned. On the adjourned dated, the learned Judge ordered publication of advertisement

in two newspapers; one in Gujarati and one in English with the date of hearing of the petition. Instead of approaching the learned Judge by way of review application, the order of the learned Judge was challenged by the respondent company “B” by filing O.J.Appeal No.33 of 2004 through an advocate who was daughter of the Judge, before the Division Bench of this court on the ground that no such notice was ever served upon them and by filing false affidavit of Direct Service, petitioner-Company had falsely obtained order of admission and publication of advertisement from the learned Judge. But, the Division Bench was not inclined to entertain the appeal as review application was the only remedy for the respondent-Company, therefore, the said appeal was withdrawn from the Division Bench. But, surprisingly, on the very next day same advocate filed Company Application No.255 of 2004 in Company Petition No.119 of 2004 for recalling the order of admission and advertisement passed by the learned Judge knowing fully well that review of the order can be made by the same Judge. In view of the appearance of daughter of the learned Judge, in review application, after obtaining necessary orders from the learned Chief Justice, the matter was

placed before another Judge. This was also a case of forum shopping.

17.Presently, in this High Court when almost 50% of the close relatives of Hon'ble Judges are practicing, then some unscrupulous litigants bound to try to exploit the situation by engaging such lawyers, more particularly, junior lawyers, whose matters are not taken up by a Judge with the intention to avoid or dodge the court of such Judge or Judges and make an attempt for favourable court. It is nothing but `forum shopping'.

18.There may not be a better case than this one. The complainant Company is a very big company. It wanted to recover huge amount of about 1 crore rupees from the present accused through criminal court without approaching civil court. It is a known fact that civil court takes years for deciding the suit. Therefore, at first instance, the complainant succeeded to bring pressure on the present applicant-accused by filing complaints against him also with the order of process issued by the learned Magistrate, and when **P.B.Majmudar, J** initially issued notice on all these four applications, then the complainant had preferred

not to appear. It is only when **Majmudar, J** granted stay then they engaged **Shri S.P.Majmudar, son of P.B.Majmudar, J.**, a raw junior advocate having hardly practice of just more than 2 years only with a view to avoid the court of Justice Majmudar. Whenever there is a money transaction, normally there are three modes and methods of recovery; (i) go to the civil court and file suit; (ii) go to the criminal court file complaint and use pressure tactics instead of filing suit before the civil court; and (iii) hire services of anti-social elements and recover the money.

Only first mode and method should be preferred.

In Special Civil Application No.9201 of 2005, Division Bench of this court passed the following order on 27.3.2006 :-

"ORDER :-

1. In this matter, learned Senior Advocate, Mr.Y.N.Oza, appearing with Mr.R.S.Sanjanwala for respondent Nos.9 and 10 tried to make a mention for adjourning this case. It is noticed by this court that designated Senior Advocates are at times mentioning the matters either for circulation, or for adjournments, or for any other purposes, which is against rules and very basis of being designated Senior Advocates. It is also noticed that mentioning is being made that designated Senior Advocate is appearing in the matter and learned

Judge taking up such matter ordering "not before me" as he is not taking up the matters of such designated Senior Advocate, which causes great inconvenience and embarrassment to others. It is also noticed that some times, designated Senior Advocates are seeking adjournments on the ground of advocate on record not available and without their presence matters are argued without proper assistance. It is also noticed that designated Senior Advocates are appearing through either associates or firms of his own office, which is against the basic concept of Senior Advocates.

2.All these things are against well established practice prevailing in the Supreme Court, as ordered by Hon'ble Chief Justice of India.

3. Hence, the Registry is directed to bring it to the notice of all the designated Senior Advocates on record and the members of the Bar through their President, Mr.Y.N.Oza, who himself is appearing in this matter for respondent Nos.9 and 10 along with Mr.R.S.Sanjanwala, that :-

(i)No designated Senior Advocate will henceforth be permitted to make a mention before any court either for circulation or for adjournments or for any other purposes.

(ii)Request made by any advocate on record to adjourn the matter on the ground of `designated Senior Advocate not available' or `it is not convenient to the designated Senior Advocate', will not be entertained.

(iii)No mentioning will be made before a Judge that designated Senior Advocate is appearing whose matters are not taken up by learned Judge. In such type of cases, the designated Senior Advocate should rescue himself or herself from appearing in such matters.

(iv)Henceforth, no designated Senior Advocate will be permitted to argue the case without the assistance of his advocate on record or his colleague sitting by his side.

(v)It is also not desirable, that designated Senior Advocate appears either through associates or firm of his or her own office.

4. This order was passed in presence of designated Senior Advocates like, Mr.Sudhir I. Nanavati, Mr.S.H.Sanjanwala and Mr.Oza, who is also President of the Bar. We were also ably assisted by Mr.Girish Bhatt. We highly appreciate his assistance.

5. In view of the aforesaid order passed by this court, instead of designated Senior Advocate, Mr.Y.N.Oza, now a request was made by Mr.R.S.Sanjanwala, to adjourn the matter. Put up on 24.4.2006.

6. Copy of this order be circulated to all the courts by the Registrar General forthwith.

(B.J.SHETHNA, J.)

(M.C.PATEL, J.)”

19.It has also come to the notice of this court that an advocate, whose matters are not placed before a particular Judge, challenging orders of such Judge before Higher forum or files his appearance in other proceedings. When a Judge is not taking up matters of particular advocate, then how an advocate can later on accept matter where a Judge has passed an order? In my consider opinion, it is not permissible at all.

20.In view of the above, while allowing all the four applications and quashing and setting aside all these four complaints filed by the complaints before the Trial Court and the order of process issued by the

Trial Court qua the applicant-accused No.3, following directions are issued;

i) That, henceforth no advocate will make his/her appearance directly or indirectly before the Judge who is not taking up his/her matters, and

ii) No advocate, whose matters are not taken up by the particular Judge, will either directly or indirectly file his appearance and challenge or defend the order passed by such Judge before higher forum in any other proceedings.

Office to follow these directions strictly.

21. With the aforesaid observations and directions, all these applications are allowed. All the four complaints namely Criminal Case Nos.2473, 2474, 2475 and 2476 of 2003 filed by the complainant-Company against the applicant-accused No.3 before the learned J.M.F.C., Surat and the order of process issued by the learned J.M.F.C., First Court, Surat below it against the applicant-original accused No.3 are hereby quashed and set aside qua the present applicant-accused No.3.

Rule is made absolute. Interim relief granted earlier stands vacated.

(B.J.SHETHNA, J.)

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